TAN SOO BING & ORS.

v.

TAN KOOI FOOK

FEDERAL COURT, IPOH
EUSOFF CHIN CJ
EDGAR JOSEPH JR FCJ
WAN ADNAN ISMAIL FCJ
[CIVIL APPEAL NO: 02-461-92]
17 AUGUST 1996

LAND LAW: *Caveats - Registrar's caveat - Power of Court to order registrar to enter registrar's caveat - National Land Code 1965, s. 417(1) - Nature and scope of Court's jurisdiction - Whether order must be necessary to give effect to a final judgment or order of the Court.*

LAND LAW: *Caveats - Registrar's caveat - Application for entry of registrar's caveat - Whether applicant must apply to registrar first - Whether applicant may go straight to Court - Whether Court has jurisdiction to entertain such applications - When may Court direct registrar to enter registrar's caveat - National Land Code 1965, ss. 319, 320, 321 & 418.*

The plaintiff and the defendant in the Court below had entered into an agreement to develop the defendant's land in Perak. Subsequently, the plaintiff sued the defendant in respect of 14 sub-divided lots ('the lots') of the land which he alleged the defendant had agreed to transfer to him. Upon an *ex parte* application made by the plaintiff, the High Court ordered, *inter alia*, the Land Administrator to enter a registrar's caveat in respect of the lots. However, by the time the said order was made, the defendant had already transferred the lots to the interveners. The interveners then applied by summons in chambers to intervene in the suit and to set aside the said order. The application to intervene was allowed but the application to set aside the said order was dismissed. The interveners appealed to the instant Court. The only issue on appeal was whether the High Court has the power or jurisdiction to direct a Registrar or Land Administrator to enter a registrar's caveat in respect of any land. Counsel for the plaintiff contended that the Court has such powers under s. 417(1) of the National Land Code 1965 ('the Code').

Held:

Per Wan Adnan Ismail FCJ (delivering the judgment of the Court):

[1] The words "... as may be necessary to give effect to any judgment or order given or made in any proceedings ..." in s. 417 of the Code do

limit the power of the Court in giving directions to the registrar. The Court can only give directions to the registrar if such directions are necessary to give effect to any judgment or order of the Court. There must be a final judgment or order of the Court; then only, in order to give effect to such a judgment or order can the Court give directions to the registrar.

[2] The special provisions pertaining to registrar's caveats in ss. 319, 320 & 321 of the Code make it clear that a person who desires to have a registrar's caveat entered in respect of any land must first apply to the registrar. He cannot go straight to the Court as the Court has no jurisdiction to entertain such an application. However, if the registrar refuses his application then he may appeal to the Court against such a refusal. The Court has appellate jurisdiction under s. 418 of the Code, and it may reverse the decision of the registrar and direct the registrar to enter a registrar's caveat. An aggrieved party cannot disregard the appeal provision under s. 418 of the Code and go straight to the High Court for an order that the registrar enter a registrar's caveat.

[3] In the instant appeal, although it was *ultra vires* the powers conferred upon the registrar under s. 417 of the Code to have entered the registrar's caveat, it was necessary in the interest of justice to maintain the *status quo* until the final resolution of the dispute between the parties. Consequently, the instant Court's order setting aside the High Court's order directing the registrar to enter a registrar's caveat was stayed to allow the plaintiff time to file an appropriate claim against the interveners and to apply for an interlocutory injunction to restrain the interveners from disposing of the lots.

[Interveners' appeal allowed.]

*[**Bahasa Malaysia** translation of Headnotes]*

UNDANG-UNDANG TANAH: *Kaveat - Kaveat Pendaftar - Kuasa Mahkamah untuk memerintahkan pendaftar untuk memasukkan kaveat pendaftar Kanun Tanah Negara 1965, s. 417(1) - Sifat serta skop bidangkuasa Mahkamah - Samada perintah mestilah diperlukan untuk memberikan kesan kepada penghakiman muktamad atau perintah Mahkamah.*

UNDANG-UNDANG TANAH: *Kaveat - Kaveat Pendaftar - Permohonan untuk kemasukan kaveat pendaftar - Samada pemohon mestilah memohon kepada pendaftar terdahulu - Samada pemohon boleh terus ke Mahkamah - Samada Mahkamah mempunyai bidangkuasa untuk melayan permohonan-permohonan yang sedemikian - Bilakah Mahkamah boleh mengarah pendaftar untuk memasukkan kaveat pendaftar - Kanun Tanah Negara 1965, ss. 319, 320, 321 & 418.*

Plaintif dan defendan dalam Mahkamah di bawah telah memasuki satu perjanjian untuk memajukan tanah defendan di Perak. Kemudiannya, plaintif telah mendakwa defendan berhubung dengan 14 lot yang telah dipecah bahagi (lot-lot itu) atas tanah yang beliau dakwa bahawa defendan telah bersetuju untuk memindahkan kepadanya. Di atas satu permohonan *ex parte* yang telah dibuat oleh plaintif, Mahkamah Tinggi telah memerintahkan, antara lainnya, Pentadbir Tanah untuk memasukkan kaveat pendaftar berhubung dengan lot-lot itu. Namun begitu, sebelum perintah tersebut di buat, defendan telah pun memindahkan lot-lot itu kepada pencelah-pencelah. Pencelah-pencelah itu kemudiannya telah memohon melalui saman dalam kamar untuk mencelah dalam guaman tersebut dan untuk mengenepikan perintah tersebut. Permohonan untuk mencelah telah dibenarkan tetapi permohonan untuk mengenepikan perintah tersebut telah ditolak. Pencelah-pencelah itu telah merayu kepada Mahkamah semasa. Satu-satunya isu yang dirayui adalah samada Mahkamah Tinggi mempunyai kuasa atau bidangkuasa untuk mengarahkan Pendaftar atau Pentadbir Tanah untuk memasukkan kaveat pendaftar berhubung dengan mana-mana tanah. Peguam bagi pihak plaintif menegaskan bahawa Mahkamah mempunyai kuasa-kuasa yang sedemikian di bawah s. 417(1) Kanun Tanah Negara 1965 ('Kanun tersebut').

Diputuskan:

Oleh Wan Adnan Ismail HMP (menyampaikan penghakiman Mahkamah):

[1] Perkataan-perkataan "... as may be necessary to give effect to any judgment or order given or made in any proceedings ..." dalam s. 417 Kanun tersebut sememangnya menghadkan kuasa Mahkamah dalam memberikan arahan-arahan kepada pendaftar. Mahkamah hanya boleh memberikan arahan-arahan kepada pendaftar jika arahan-arahan yang sedemikian adalah perlu untuk menguatkuasakan mana-mana penghakiman atau perintah Mahkamah itu. Haruslah terdapat suatu penghakiman muktamad atau perintah Mahkamah, maka hanya dengan itu sahaja, bagi menguatkuasakan penghakiman atau perintah yang sedemikian boleh Mahkamah memberikan arahan-arahan kepada pendaftar.

[2] Peruntukan-peruntukan khas berhubung dengan kaveat pendaftar dalam ss. 319, 320 & 321 Kanun tersebut menjadikannya jelas bahawa seseorang yang mahukan kaveat pendaftar dimasukkan berhubung dengan mana-mana tanah mestilah terdahulu memohon kepada pendaftar. Beliau tidak boleh terus ke Mahkamah kerana Mahkamah tidak mempunyai bidangkuasa untuk melayan permohonan yang sedemikian. Namun begitu, jika pendaftar menolak permohonannya maka beliau boleh merayu kepada Mahkamah terhadap penolakan yang sedemikian. Mahkamah mempunyai bidangkuasa

rayuan di bawah s. 418 Kanun tersebut, dan ianya boleh mengakaskan keputusan pendaftar dan mengarahkan pendaftar supaya memasukkan kaveat pendaftar. Sesuatu pihak yang terkilan tidak boleh bersikap tidak menghiraukan peruntukan rayuan itu di bawah s. 418 Kanun tersebut dan terus ke Mahkamah Tinggi untuk mendapatkan satu perintah supaya pendaftar memasukkan satu kaveat pendaftar.

[3] Dalam rayuan semasa ini, sungguhpun ianya adalah *ultra vires* kuasa-kuasa yang dianugerahkan ke atas pendaftar di bawah s. 417 Kanun tersebut untuk memasukkan kaveat pendaftar itu, ianya adalah perlu demi keadilan untuk mengekalkan *status quo* sehingga ketetapan muktamad pertikaian antara pihak- pihak tersebut. Akibatnya, perintah Mahkamah semasa yang mengenepikan perintah Mahkamah Tinggi mengarahkan pendaftar supaya memasukkan satu kaveat pendaftar telah ditangguhkan bagi memberikan plaintif masa untuk memfailkan satu tuntutan yang wajar terhadap pencelah-pencelah dan memohon untuk mendapatkan satu injunksi interlokutori bagi menghalang pencelah-pencelah daripada melupuskan lot-lot itu.

[Rayuan pencelah-pencelah dibenarkan.]

Cases referred to:

Seet Soh Ngoh v. Venkateswara Sdn. Bhd., & Anor. [1976] 1 MLJ 242 ***(dist)***

A.R. PL Palaniappa Chettiar v. PL. AR Letchumanan Chettiar & Anor. [1982] 1 MLJ 98 ***(not foll)***

Boonsom Boonyanit v. Adorna Properties Sdn. Bhd. [1990] 3 MLJ 444 ***(not foll)***

K.I. Muhiudeen Rawther v. K.E.P. Abdul Kassim & Ors. [1959] 25 MLJ 257 ***(foll)***

Sungai Biak Tin Mines Ltd. v. Saw Choo Theng & Anor. (No. 2) [1970] 2 MLJ 196 ***(refd)***

Mosbert Berhad (In Liquidation) v. Stella D'Cruz [1985] 2 MLJ 446 ***(foll)***

Legislation referred to:

FMS Land Code s. 240

National Land Code 1965, ss. 319, 320(1)(a), 321, 417(1), 418

Other source referred to:

National Land Code – A Commentary, Judith Sihombing, 2nd Edn., 1992, p. 928

[Appeal from High Court Malaya, Ipoh; Suit No: 381 of 1974]

For the interveners - Darryl Goon; M/s. Raja, Darryl & Loh

For the plaintiff - Dato' N.T. Rajah (Paul Subramaniam with him); M/s. Maxwell, Kenion, Cowdy & Jones

JUDGMENT

Wan Adnan Ismail FCJ:

By the agreement in writing dated 6 July 1970 Tan Kooi Fook and Leong Chew Wai the plaintiff and defendant respectively in this suit entered into an agreement for the development of the defendant's land held under Lot No. 2632 Mukim of Ulu Bernam East, District of Batang Padang, Perak (the said land). In the suit the plaintiff sued the defendant in respect of 14 subdivided lots of the said land which the plaintiff alleged the defendant had agreed to transfer to the plaintiff.

By the order dated 31 July 1992 the High Court at Ipoh on an *ex parte* application of the plaintiff made an interlocutory order as follows:

> **Dengan Ini Adalah Diperintahkan** bahawa defendan dilarang sehingga perintah selanjutnya oleh dirinya sendiri atau oleh penggaji ajen ataupun dengan apa jua cara yang lain daripada menjual, menggadai, menyerahhak ataupun dengan dengan apa-apa aset-asetnya dalam bidangkuasa keutamaannya tanah-tanah yang dikenali sebagai H.S.(M) 110/73, 111/73, 121/73, 123/73, 124/73, 125/73, 126/73, 127/73, 128/73, 129/73, 130/73, 131/73, 132/73 dan 133/73 bagi Lot 5988, 5989, 5999, 6001, 6002, 6003, 6004, 6005, 6006, 6007, 6008, 6009, 6010, 6011 semua Ulu Bernam bangunan-bangunan di atasnya.
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> **Dan Selanjutnya Diperintahkan** bahawa Pentadbir Tanah berkenaan memasuki satu kaveat pendaftar atas tanah-tanah yang dikenali sebagai H.S.(M) 110/73, 111/73, 121/73, 123/73, 124/73, 125/73, 126/73, 127/73, 128/73, 129/73, 130/73, 131/73, 132/73 dan 133/73 bagi Lot 5988, 5989, 5999, 6001, 6002, 6003, 6004, 6005, 6006, 6007, 6008, 6009, 6010, 6011 semua Ulu Bernam sehingga perintah selanjutnya.
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> **Dan Adalah Diperintahkan** bahawa defendan hendaklah mengemukakan kepada plaintif tempat di mana wang yang dikutipnya daripada jualan tanah yang dikenali sebagai H.S.(M) 110/73, 111/73, 121/73, 123/73, 124/73, 125/73, 126/73, 127/73, 128/73, 129/73, 130/73, 131/73, 132/73 dan 133/73 bagi, Lot 5988, 5989, 5999, 6001, 6002, 6003, 6004, 6005, 6006, 6007, 6008, 6009, 6010, 6011 semua Ulu Bernam disimpan dalam tempoh tujuh hari dari tarikh perintah ini diserah.

By the time the said order was made the said 14 subdivided lots had already been transferred by the defendant to the interveners, the present appellants. By the summons in chambers dated 12 August 1992, the appellant applied to intervene in the suit and to set aside that part of the said order that directed the appropriate Land Administrator to enter a Registrar's caveat in respect of the said 14 subdivided lots. The application to intervene was allowed but the application to set aside the order was dismissed with costs. Hence this appeal.

There is only one issue before us, namely, whether the High Court has the power or jurisdiction to direct the Registrar or any Land Administrator to enter a Registrar's caveat in respect of any land.

It is the contention of the respondent/plaintiff that the Court has that power under s. 417(1) of the National Land Code 1965 ('the Code') which reads as follows:

> 417. General authority of the Court.
>
> (1) The Court or a Judge may by order direct the Registrar or any Land Administrator to do all such things as may be necessary to give effect to any judgment or order given or made in any proceedings relating to land, and it shall be the duty of the Registrar or Land Administrator to comply with the order forthwith.

In support, the learned Counsel cited the following authorities:

1. *Seet Soh Ngoh v. Venkateswara Sdn. Bhd. & Anor.* [1976] 1 MLJ 242.
2. *A.R. PL Palaniappa Chettiar v. PL. AR Letchumanan Chettiar & Anor.* [1982] 1 MLJ 98
3. *Boonsom Boonyanit v. Adorna Properties Sdn. Bhd.* [1990] 3 MLJ 444

In *Seet Soh Ngoh*, Chang Min Tat J (as he then was) said:

> Mr. Sri Ram, however, argued that on a proper reading of s. 319 of the National Land Code dealing with a Registrar's caveat, the Registrar was the only person who could decide whether to enter his caveat. His contention was that there was no power in anyone, not even the Court, to order him to do so. I do not accept that. Section 320(1)(a) empowers the Registrar to enter his caveat for the prevention of fraud and improper dealing and if such a possible dealing is brought to the notice of the Court and the Registrar is before the Court, I see no reason why the Court cannot in such a case order him to do so.

In *Palaniappa Chettiar,* Wong Kim Fatt JC (as he then was) said:

> In my judgment, the provisions of s. 417(1) are clear and unambiguous. It vests the power in the High Court to direct by order the Registrar to carry out or give effect to any judgment or order given or made in any proceedings relating to land.
>
> I therefore hold that the High Court has the power under s. 417(1) of the Code to order the Registrar to enter a Registrar's caveat under s. 320 of the Code for the prevention of fraud or improper dealings, whether or not the Registrar is a party to the proceedings.

In *Boonsom Boonyanit,* Dzaiddin J (as he then was) followed *Palaniappa Chettiar.* He said:

> I am in complete agreement with his decision and adopt the same in this present application. However, what I need to emphasise here is simply that s. 417 empowers the Court to direct by order the registrar to do all such things as may be necessary to give effect to the Court's order or judgment which included

> ordering the registrar to enter his Registrar's caveat under s. 320. In the instant case, after a proper scrutiny of the subsequent affidavits of Mr. Bill Saw (lampiran 11) and the applicant (lampiran 12) and the writ and the statement of claim, I am satisfied that in the circumstances of the whole case the registrar's caveat is necessary to be entered to prevent fraud or improper dealing in respect of the said land and should remain until the final determination of the dispute in Civil Suit No. 22-401-89.

In our view, in s. 417(1) the words "be necessary to give effect to any judgment or order given or made in any proceedings" are very important. These words limit the power of the Court to give directions to the Registrar. The Court can only give directions to the Registrar if such directions are necessary to give effect to any judgment or order of the Court. There must first be a final judgment or order of the Court. Then only, in order to give effect to such judgment or order the Court can give directions to the Registrar.

In *K.I. Muhiudeen Rawther v. K.E.P. Abdul Kassim & Ors.* [1959] 25 MLJ 257, Ong J (as he then was) said of s. 240 of the former FMS Land Code, which provisions are quite similar to s. 417(1) of the NLC:

> Lastly, s. 240, in my view, only declares in general terms the power of the Court to direct the proper registering authority "to make any memorial, or otherwise to do such acts or make such memorials as may be necessary to give effect to the judgment or order of the Court." In my view, this section is confined to directions giving effect to a final judgment or order of the Court, and has no application to interlocutory matters.

The provisions of s. 240 FMS Land Code are as follows:

> 240. In any proceeding respecting any land or in respect of any transaction or contract relating thereto, or in respect of any instrument, caveat, memorial or other proceeding affecting any land, the Court may by order direct the proper registering authority to cancel, correct, substitute or issue any document of title, or to make any memorial, or otherwise to do such acts or make such memorials as may be necessary to give effect to the judgment or order of the Court.

Thus, where for example the Court in a proceeding relating to a particular piece of land makes an order that an instrument of transfer in respect of such land is void, the Court may direct the Registrar to remove any memorial made pursuant to such void instrument of transfer from the Register and issue document of title in respect of the said land. Such direction is necessary to give effect to the order that the Court has made.

The extent of the operation of s. 417 of the Code was also considered in *Sungai Biak Tin Mines Ltd. v. Saw Choo Theng & Anor. (No. 2)* [1970] 2 MLJ 196. Suffian FJ (as he then was) on behalf of the Federal Court said:

Our judgment says that the defendant company was not guilty of breach of condition and that therefore its sublease should not have been cancelled. If it had been cancelled, then the company would still have been the sublessee, and it alone had power to dispose of any interest in the land; the plaintiffs could not have done so and if they have done so to the detriment of the company's right, the Court is not powerless to get Mr. Lee Yat Kai off the register. Section 417 of the National Land Code clearly says that the Court has power to direct the collector to do all such things as may be necessary to give effect to its judgment or order. If we did not order the collector to remove Mr. Lee's name from the register and put back on it that of the defendant company, we would be allowing the plaintiffs and Mr. Lee to thumb their noses at a judgment of the Federal Court, and I do not think that we should allow that. We should give effect to our judgment and order the collector to get Mr. Lee off the register and put the defendant company back on it.

In *Mosbert Berhad (In Liquidation) v. Stella D'Cruz* [1985] 2 MLJ 446 Seah SCJ (as he then was) on behalf of Supreme Court said of s. 417 of the Code:

The section is of limited application only and is intended to authorise the High Court to direct the Land Registrar to do all such things as may be necessary to give effect to any judgment or order made by the Court affecting the land. It does not, in our judgment, give power to the Court to allow a defective or void private caveat to be amended by the caveator. For the purpose of deciding whether a private caveat is defective or void the High Court should confine itself to the caveat and other relevant supporting documents.

The learned author, Judith Sihombing, in her book *National Land Code – A Commentary,* 2nd Edn., under Jurisdiction of the Court (1992) said at p. 928:

Under this section, the order directing the Registrar to act will usually be the result of an action where a party disputes the registration of another, or where a claimant has succeeded in proving to the Court his right to be registered. For example, where a party has been successful in a priority claim before the Court and is thereby entitled to become registered so as to displace an earlier registered party, the Registrar, not being a party to the action, might refuse to register the appropriate memorial simply on the application of the successful party. In such a case, an order under this section will be necessary to require the Registrar to carry out his duties in accordance with the terms of the Code and the judgment of the Court.

By contrast to this section, s. 418 empowers any party who is 'aggrieved' by a decision of the Registrar to appeal to the Court. Thus s. 418 is the starting point for many of the actions which result in a judgment which is the subject matter of the order to the Registrar under s. 417.

The relevant sections in the Code pertaining to Registrar's caveat are ss. 319, 320 and 321.

Under s. 319(1)(a) a Registrar's caveat may be entered "by the Registrar on the register document of title to any land in any of the circumstances specified in s. 320."

Section 320 provides as follows:

> 320. Circumstances in which Registrar's caveats may be entered.
>
> (1) Subject to sub-s. (2), a Registrar's caveat may be entered in respect of any land wherever such appears to the Registrar to be necessary or desirable:
>
> (a) for the prevention of fraud or improper dealing; or
>
> (b) for protecting the interests of:
>
> (i) the Federation or the State Authority, or
>
> (ii) any person who is in his opinion under the disability of minority, mental disorder or unsoundness of mind, or is shown to his satisfaction to be absent from the federation; or
>
> (ba) for securing that the land will be available to satisfy the whole or part of any debt due to the Federation or the State Authority, whether such debt is secured or unsecured and whether or not judgment thereon has been obtained; or
>
> (c) by reason of some error appearing to him to have been made in the register or issue document of title to the land or any other instrument relating thereto.
>
> (2) Knowledge by the Registrar of the fact that any land or interest therein has been acquired, or is to be held, by any person or body in a fiduciary capacity shall not of itself constitute a ground for entering a Registrar's caveat in respect of that land.

This section gives to the Registrar the power to enter a Registrar's caveat in respect of any land "wherever such appears to the Registrar to be necessary or desirable:

(a) –

(b) –

(ba) –

(c) – ..."

It is for the Registrar to be satisfied that the entry of such a caveat is necessary or desirable. On an application for entry of such a caveat the Registrar has a duty to decide whether or not it is necessary or desirable for

such a caveat to be entered for any of the purposes as specified in (a), (b), (ba) and (c) of sub-s. (1). His refusal is a decision within s. 418 of the Code. Therefore the aggrieved party must appeal to the Court under this section.

In our view under the special provisions pertaining to Registrar's caveat in ss. 319, 320 and 321 of the Code it is clear that a person who desires to have a Registrar's caveat entered in respect of any land must apply to the Registrar. If the Registrar refuses his application his remedy is to appeal to the Court against such refusal. He cannot go straight to the Court. In our view the Court has no jurisdiction to entertain such an application. The Court only has appellate jurisdiction under s. 418. Under s. 418 the Court may reverse the decision of the Registrar and direct the Registrar to enter the Registrar's Caveat.

In *Seet Soh Ngoh,* the Registrar was before the Court and the learned Judge decided on the basis that the Registrar was before the Court. The Judge said the Court had power to order the Registrar under s. 320(1)(a). Section 417(1) was not discussed.

Palaniappa Chettiar followed *Seet Soh Ngoh* but the learned JC went further to say that the Court had the power whether or not the Registrar was before the Court. In this case an application for entry of the Registrar's caveat was made to the Registrar but was refused. The learned JC said:

> If the Registrar refuses on request by a party, as in the present case, to enter a Registrar's caveat, that party in my opinion is not without any legal remedy. The interested or aggrieved party may apply to the High Court for an order that the Registrar enter a Registrar's caveat as directed. It is of course prudent to cite the Registrar as a party. Although the Registrar has a discretion, there is nothing in the Code to prevent or restrict the exercise of the power by the High Court as it deems just.

With respect we cannot agree with him. We agree that the aggrieved party is not without remedy. But his remedy is to appeal against the refusal of the Registrar to the Court under s. 418 of the Code. In our view the aggrieved party cannot disregard the appeal provision under s. 418 and go to the High Court for an order that the Registrar enter a Registrar's caveat. The Court can only direct the Registrar to enter the Registrar's caveat if the Court does not agree with the decision of the Registrar when exercising the appellate jurisdiction under s. 418 of the Code.

In *Boonsom,* the learned Judge held that the Court had the power under s. 417(1) to direct the Registrar to enter a Registrar's caveat under s. 320 to prevent fraud or improper dealing.

As we said earlier, the Court can only give directions under s. 417(1) if it is "necessary to give effect to any judgment or order." What is the judgment or order here? None. The Judge said – "... may be necessary to give effect to the Court's order or judgment which included ordering the Registrar to enter a Registrar's caveat under s. 320."

It appears that the Judge regarded the order directing the Registrar to enter a Registrar's caveat is included in the "judgment or order" mentioned in s. 417(1). We don't think that is correct. As we said earlier that "judgment or order" must be an earlier final order of the Court.

The learned Counsel for the respondent had submitted that in the present case the Court had made injunction and Anton Pillar orders against the defendant. The Registrar's caveat was necessary to give effect to the orders. Therefore s. 417(1) was applicable.

In view of what we said earlier, this submission cannot be accepted. The Court has no power to direct the Registrar to enter a Registrar's caveat. It can only do so upon appeal under s. 418 of the Code.

Further the injunction and Anton Pillar orders were made against the defendant – not against the interveners. Even assuming that the Court has the power under s. 417(1) to direct the entry of a Registrar's caveat the pre-condition that "it is necessary to give effect to the Court's judgment or order" is still not fulfilled. It is not necessary to enter a Registrar's caveat in order to give effect to the injunction and Anton Pillar orders.

For the above reasons we allow this appeal with costs here and below. That part of the order of the High Court dated 31 July 1992 directing the Registrar to enter a Registrar's caveat in respect of the 14 subdivided lots is hereby set aside. Deposit is refunded to the appellants.

That however is not the end of the matter.

In the course of his submissions before us Dato' N.T. Rajah, the learned Counsel for the respondent had directed our attention to the risk of irreparable damage to the plaintiff should the Registrar's caveat be removed; namely, that the interveners would most probably transfer the lots concerned to *bona fide* purchasers for value while the suit remained pending. In such a situation the plaintiff, even if he should succeed at the final hearing, might well be deprived of the fruits of his judgment and thus suffer serious prejudice. He therefore urged the preservation of the *status quo* by allowing the Registrar's caveat to remain.

For the reasons stated, we have concluded that it was *ultra vires* the powers conferred upon the Registrar under s. 417 of the Code to have entered the caveat. However, we are of the view that, in order that justice be served, it is necessary that the *status quo* should be maintained till all the disputes among the parties are resolved.

We therefore direct that the order we have just made be stayed for eight (8) weeks to give the plaintiffs/respondents time to file an appropriate claim against the interveners/appellants in connection with the said 14 lots and to apply for an interlocutory injunction to restrain the interveners/appellants from disposing the said lots till the disposal of the claim.

Reported by Gan Peng Chiang